D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 504/2006

Mangi Lal Pareek.
Vs.
State of Rajasthan & Anr.

Date of Order :: 3.12.2007

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. M.Mridul, Sr. Advocate assisted by
Mr. RN Upadhyaya, for the appellant.
Mr. D.S. Rajvi, for the respondent No.2.

We have heard learned counsel for the parties. The simple case has been complicated because of late surge in raising a claim which had long become barred by time and the basic facts about the appellant having already been put in the pay-scale now claimed by him from the date of appointment w.e.f. 16/17.5.1975 being not in dispute.

We notice the brass facts necessary for the present purposes and about which there is no dispute. The petitioner has initially been appointed as Lower Divisional Clerk (for short 'LDC' hereinafter), a civilian in the Defence services and was later on appointed under the Jai Narayan Vyas University then known as University of Jodhpur, as Stenographer by letter of appointment dated 3.1.1972 in the pay-scale of Rs.170-390 plus admissible allowances as per rules. This aappointment was on

the probation for one year and on completion of one year's service by order dated 24.2.1973 he was confirmed in the pay-scale in which he had been appointed w.e.f. 22.1.1973 while the petitioner was serving in the University, according to the petitioner's own averments, the Ordinance 321-B was promulgated in which three posts of Stenographers were encadred as Section Officers to be promoted from amongst Stenographer Gr.II with three years experience as such, the Stenographer Gr.II which was to be filed 100% by promotion from Stenographer Gr.III by placing the then all existing Stenographer Gr.II in the pay-scale of Rs.225-525 and lastly, Stenographer Gr.III in the pay-scale of Rs.170-320 to be filled by direct recruitment. It appears from the material placed on record that the petitioner had initially been appointed as Stenographer Gr.III in existing pay-scale under the then Government Rules and at the relevant time Ordinance 321-B had not come into force.

There is no dispute about the fact that since the petitioner was placed in the pay-scale of Rs.225-525 vide order dated 16/17.5.1975 and drawn his entitlement in the same pay-scale, the pay-scale of Rs.225-525 is recommended by the Ranawat Pay Commission and adopted by the University of Jodhpur. However, subsequently, vide Resolution No.26/86 dated 4.1.1986, the petitioner amongst other seven

Stenographers were allowed the pay-scale of Rs.200-450 w.e.f. the date of their initial appointments as in the case of Shri I.R.Kalla. Before adopting pay-scale of Rs.225-525, the pay-scale approved for Stenographer Gr.II for University was Rs.200-450. It was stipulated that no arrears on account of fixation upto 28.2.1986 be paid till the financial sanction is obtained from the Government. There is no dispute further that the State Government has not issued financial sanction for payment of arrear so far.

It is in the aforesaid circumstances, the petitioner has now claimed that he should be paid all arrears of emoluments as all other Stenographers in the University have been paid the arrears of emoluments w.e.f. the date of appointment. For that purpose, reliance has been placed on the documents before the Court today alongwith additional affidavit which is dated 29.5.1970.

However, this claim has been raised for the first time by seeking amendment of the writ petition bearing S.B. Civil Writ Petition No.3310/1989 in the year 1999.

The original writ petition was confined to relief relating to release of one additional increment on completion of ten years of service by

counting the period spent under the Central Government as LDC prior to employment with the University, to which claim Annexures-3 to 7 filed along with original writ petition relates. It is somewhere in the year 1999 that amendment was sought by seeking relief for arrears of emoluments flowing to the petitioner from fixation in the pay-scale of Rs.200-450 w.e.f. the date of his initial appointment that is to say 22.1.1972.

Be that as it may, the petitioner had already been placed in the higher pay-scale of Rs.225-525 w.e.f. 16/17.5.1975 and the order by which the petitioner was put in the pay-scale of Rs.200-450 w.e.f. the date of initial appointment also came in the year 1986. The crystallize claim of arrears of emoluments made in the year 1999 was hopelessly barred by time as a claim quantified sum of emoluments by the petitioner upto the date of Syndicate Resolution dated 24.5.1986 since there is no dispute about subsequent emoluments.

The law is well settled that the claim for specific sum of money which has become barred by time cannot be made ordinarily subject of invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for the purpose of barrier of invocation of power under writ when right to civil remedy has been lost. The claim of the petitioner

deserves to be disallowed on this count alone.

Moreover, the respondents have asserted that no one amongst them who were placed in the pay-scale of Rs.200-450 w.e.f. their respective date of appointment alongwith petitioner vide order dated 28.2.1986 had been paid arrears.

Accordingly, the appeal fails and is hereby dismissed. No costs.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

RM/